

**Before The
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

In the Matter of)	
)	
Revision of Procedures Governing)	MB Docket No. 05-210
Amendments To FM Table of Allotments and)	RM-10960
Changes Of Community of Licenses in the)	
Radio Broadcast Services.)	
)	

COMMENTS OF REC NETWORKS

1. REC Networks ("REC") is a supporter of locally owned and diverse radio. REC currently operates several Internet only radio stations. REC also operates several websites including the original LPFM Channel Search Tool¹. REC Networks also represents the interests of independently owned Low Power FM ("LPFM") broadcast stations and their listeners. REC also follows issues that involve the availability of media in rural and underserved areas especially within our area of interest of Southern California, Nevada and Arizona.

2. For the past decade, REC has been following and in some cases, commenting on proceedings related to the Table of Allotments ("Table", "the Table"). In fact, our first filing was on a Table of Allotments issue².

3. REC feels that the use of the Table for commercial FM allotments assure that smaller communities are properly represented. The main problem with current allotment policy is that it favors placing allotments in larger communities³. In many cases, these larger communities skirt major metropolitan areas even though the city grade contour of the allotment does not substantially overlap an urbanized area. For this reason, we need to revisit certain policies such

¹ - <http://www.recnet.com/lpfminfo>

² - See *Pahrump, Nevada*, Comments of Richard Eyre-Eagles, MM Docket 95-45.

³ - The Commission consistently favors allotment proposals with larger gain areas then loss areas.

as the "Tuck" analysis⁴. We will address this issue as well as suggest changes to the Tuck policy that would better promote broadcast localism.

Addressing the specific proposals

4. Change of FM Community of License by Minor Modification. REC feels that any ability for commercial FM licensees to be allowed to change their community of license without any scrutiny is the most dangerous aspect of this proposal. Here in Arizona, we have seen several cases recently where stations have done "metro moves" to bring their stations closer to an urbanized area under the guise of providing a small town with their "first service". We have seen many situations where a station operating with one of these "rimshot" city of licenses does not direct their programming towards their community of license. This includes not locating their main studio in the community of license, denying residents of the community of license by not providing local call-in numbers⁵ to participate in contests and other on-air activities and worst of all, advertising rates that are well out of reach to the community of license. In some cases, these abuses of the city of license are resulting in long running Class-D stations as well as newly established LPFM stations being displaced. Even though we recognize the secondary nature of these stations, these stations should not fall victim to abuses of the city of license and overall greed by some commercial broadcast enterprises.

5. REC feels that commercial broadcast stations are community resources and have been entrusted by the public to serve their community of license for which they have been granted. Unfortunately, the commercial broadcast industry sees these stations as "real estate". For these reasons, we must oppose any changes to how the community of license is changes in respect to commercial FM broadcast stations.

⁴ - See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

⁵ - We note that even though these stations do provide the local or toll free number within the city of license for the main studio as required by the Commission's Rules, they do not offer or publicize on the air local telephone numbers for the city of license to participate in the station's promotional activities such as contests and call-in talk shows. Many of these stations do not cover local events within their city of license therefore listeners within the area that the station is intended to serve is not able to participate and therefore be a stakeholder in the station. Since the station is not gearing themselves towards their city of license, there is no incentive for local advertisers to use these stations and based on the ratings from the urbanized area, local advertising is out of reach and can even be discouraged.

6. Mandated Filing of Form 301 When Filing Petitions to Amend The Table. In the past, REC has gone on record as supporting a "filing fee" for petitioning to amend the Table⁶. Unfortunately, there are a small group of individuals who have been filing hundreds of "frivolous" allotment petitions (in fact one even tried to apply for an LPFM station). These allotments have resulted in creating a logjam by blocking potential channels that can be used for future LPFM stations by those who in the end, did not even file an application. This is very well evidenced by the recent FM auctions.

7. The NPRM does ask about how this would impact small business and minority owned business. We feel that a filing fee of just under \$3,000 is reasonable most small and minority-owned businesses that are serious about starting a commercial radio station for their community.

8. REC feels that the concept of requiring that filing Form 301 will create the necessary barrier that will assure that petitions to amend the Table are from those that seriously want to provide a broadcast service and assures their participation in the auction. Therefore, REC will support the requirement that filing the Form 301 and paying the filing fee with any petitions to amend the Table.

9. Number of channel changes that may be proposed in one proceeding. Recently, especially out here in the west, we have seen allotment proceedings that look more like chess games than a simple drop-in proceeding. The more channel changes, the more counterproposals, the more people who are adversely impacted. REC supports limits on the number of channel changes and feels that no station should be required to involuntarily change their channel to accommodate an amendment to the Table.

10.. Electronic Filing of petitions and pleadings in allotment proceedings - These days, many proceedings have been "opened to the general public" through the implementation of the Commission's Electronic Comment Filing System (ECFS). However, since Table of Allotment proceedings are declared "restricted", they can not be filed through the ECFS. We can not understand why Table of Allotment proceedings require service and why they can not be filed by

⁶ - See Broadcast Localism, MB Docket 04-233, Comments of REC Networks at 53.

ECFS. Virtually anyone who is a party in an allotment proceeding has a computer and internet access. Just like with other proceedings, they can review the comments on-line or at the Commission's Research Information Center. REC feels that in this modern time, we do not need to have to "spoon feed" comments to the petitioner in allotment cases. REC feels that these proposed allotments will impact a community and therefore the community has the right to comment without having to spend \$10 or more on UPS or Federal Express⁷ to send in a page or two of comments. REC is asking that the Commission reclassify Table of Allotment Proceedings (as well as amendments to the Air to Ground tables) as "*permit but disclose*" with no required service and allow comments to be filed through the ECFS⁸.

Redefining the "Tuck" Criteria

11. The Tuck Analysis⁹ was intended to provide a policy for determining if an allotment is intended to serve an urbanized area. As well intentioned as *Tuck* appears to be, it is fatally flawed. The Tuck Analysis takes into consideration various factors to determine a community's "independence" from the urbanized area¹⁰. It looks at various issues from local newspapers¹¹ to how many residents from the community commute to the urbanized area. Take Pahrump, Nevada. This community is very separated from the Las Vegas urbanized area. It would have a pristine Tuck Analysis. Yet with that, broadcast stations such as KXTE can use the Pahrump

⁷ - The reason for having to use the alternate delivery services is due to the security issues surrounding the U.S. Postal Service (USPS) and the very slow handling time of Commission mail that is received through the USPS.

⁸ - In cases where an existing licensee or permit holder is being asked to change channel or class as a result of the allotment, that party should continue to be served by the party who is petitioning the change.

⁹ - See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

¹⁰ - These include the extent that people work in the community, newspapers and other media, how community leaders and local residents perceive the community identity, local government, ZIP code and separate government listings, commercial establishments and health facilities and a separate and distinctive advertising market from the urbanized area. Not all communities must meet all criteria.

¹¹ - REC feels that the definition of "newspaper" is very broad in this case. Current and recent allotment proceedings have used weekly newspapers and even military base newsletters to justify the local newspaper. REC feels that the newspaper that has the largest paid circulation within the community of license should be considered the newspaper that is considered for the *Tuck* analysis.

city of license to program to the Las Vegas metro and completely ignore Pahrump¹². REC feels that the FCC should abandon the current *Tuck* policy and establish a new policy that very closely scrutinizes not only the city of license but also the choice of transmitter site and what impact that can have on the urbanized area. REC feels that FM allotments should specify transmitter sites and reference coordinates that are as close to a community center as possible and should only be allowed the class necessary to provide a 60 dBu signal over the community. REC recommends the following changes to the criteria for the *Tuck* analysis:

Current language: "The extent to which residents work in the larger community, rather than the specified community."

Change to: "The extent to which residents work in any community of the impacted urbanized area rather than the specified community."

The urbanized area will usually contain more than one community. By changing the language to state "urbanized area" instead of "larger community", this could prevent the misconception that the criteria only applies to the primary city in the urbanized area. With this new language, employees who work in *any* community within the urbanized area would count against the local community. Allotment proponents should have the burden to show the number of employed residents within the community of license as well as a list of major employers with the number of employees in the community of license.

Current language: "Whether the community has it's own newspaper or other media that covers the community's local needs or interests."

Change to: "Whether the newspaper that has the largest paid circulation within the community of license is also the dominant publication within all or a portion of the urbanized area and whether the community has licensed to it, a commercial full power or Class-A TV station or it is within the Grade-B contour of a commercial full power or Class-A television station from another community whose Grade-B contour does not overlap into the urbanized area."

Under today's criteria, any free "throw-away" weekly newspaper, chamber of commerce newsletter or even in one case, a newsletter from a military facility could be considered a newspaper. While these publications are available, it does not represent what the local citizens of the community of license perceive as the newspaper that they receive as their source for news and advertising. Our criteria is the newspaper with the largest paid circulation within the community of license. If the newspaper covers a significant part of the urbanized area along with this community, then it fails this criteria. The TV station criteria was designed to specify that the TV station must be either licensed to the community of license or a nearby community that provides service into the subject community but does not serve the urbanized area. This will show the potential for an

¹² - The first comment ever filed by REC Networks was on an allotment case was to add a second aural service as a Class-A in Pahrump. Mostly due to the frustration out of the abuse of the city of license by the licensee of Channel 298 in Pahrump.

independent advertising market. We specified only full power TV and Class A stations as full power TV stations have specific public interest requirements and Class A stations were required to provide a specific amount of local programming.

Current language: " Whether the specified community has its own local government and elected officials."

Proposed language: "Whether the specified community has its own local government structure such an elected mayor and council and the extent to which important community decisions are made at a local venue or from the urbanized area."

Local government can be broadly defined. A fire protection district, water board, even a school board can be perceived as "local government". We feel that a true elected government at the city or town level with a structure that calls for a specific leader (such as a mayor) and a council of at least two persons other than the mayor. This prevents the criteria to be used for a county supervisor who has an office or resides in the community of license. If the community does not have a local government structure (such as a mayor or council), then we look at the community where the county seat is located. This is where the important decisions are made. If the county seat is not in the urbanized area, then it would meet this criteria.

Current language: "Whether the smaller community has its own telephone book provided by the local telephone company or ZIP code."

Proposed language: "Whether the state telecommunications regulator recognizes the community as it's own telephone rate center or whether the rate center that it is considered is within the urbanized area."

Many communities, including very small towns have ZIP codes. We do not feel that ZIP code is a good criteria. The presence of a post office or ZIP code is not a sole qualification for a community to be eligible for an allotment. On the telephone book issue, we now point out that not only are there competing telephone directories but now there are competing telephone companies. One telephone company may choose to publish a directory with only the community while another one may publish the listings for the subject community in the same directory as one that serves the urbanized area. We feel that a better criteria is to use the rate center. Unlike the telephone book, the rate center is determined by the state's telecommunications regulator and all telecommunications providers follow the rate center boundaries. The rate center is also what is displayed on telephone bills when calls to the community of license are made. This will determine if the community has its own identity or whether it is identified with the urbanized area.

Current language: "Whether the community has its own commercial establishments, health facilities and transportation systems."

Proposed language: "Whether the major commercial establishments and health facilities are located within the urbanized area and the availability of general public transportation within the community of license compared to any public transportation service provided between the community of license and the urbanized area."

Even though there may be some businesses in the community. Maybe a local market, general store, hardware store, etc. Where do residents go for major items? (such as chain supermarkets, big box stores, department stores, etc.) Are these stores in the urbanized area? Is there public transit available to the general public¹³ within the community of license? (and non-urbanized areas surrounding the community) Or, is a most of the transit in the area concentrated on transporting passengers between the community of license and the urbanized area?

Current language: "The extent to which the specified community and the central city are part of the same advertising market."

Proposed language: [Delete criteria]

We feel that the answer to this question can be best answered in the criteria about the newspaper and television stations that service the specified community.

Current language: "The extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools and libraries."

Proposed language: "The extent to which the specified community relies on a community within the urbanized area for various municipal services such as police, fire protection, schools and libraries."

It may be possible that the urbanized area covers more than one county. If the community is not in the city name that is specified as the Census Bureau's urbanized area name, then it would automatically qualified. Our proposed rewording would allow for a county seat community that is not the main urbanized city name but another community within the urbanized area. For example, the Los Angeles urbanized area consists of both Los Angeles and Orange Counties. If a community in Orange County was up for *Tuck*, then taking this criteria literally, it would pass because even though the community is near the *Los Angeles* urbanized area, it does not receive any services from Los Angeles since the county seat for Orange County is in Santa Ana. Santa Ana is within the Los Angeles urbanized area. Under our criteria, the community would fail this criteria.

New criteria: "Whether the community of license can be served from a location other than the proposed reference coordinates and/or at a class lower than the one proposed where it will not result in providing city-grade service in the urbanized area."

Instead of a Class C allotment on a mountaintop that would boom a signal into the community of license but also a good portion of the urbanized area, would a C3 at a different location provide city grade coverage over the city of license but does not cover the urbanized area?

With our proposed criteria, we are no longer associating the specified community with the major metropolitan city within the urbanized area but instead associating it with *any community* within the urbanized area. We also feel that subject communities should meet as many if not all of

¹³ - We specify "general public" because some communities support only a "dial-a-ride" service that is available only to senior citizens and the disabled.

these criteria. The leeway the Commission has provided in some cases¹⁴ is unacceptable if localism is to be achieved.

12. "Tuck" Analysis area - Current Commission policy requires the application of the "Tuck" analysis in situations where the *City Grade* contour of a proposed FM Allotment covers at least 50% of the urbanized area. Even though an allotment may not have a city grade contour within 50% of the urbanized area, its protected service contour could serve at least 50% of the urbanized area. We do note that in some situations, full power stations can place boosters in the areas within their service contour but out of reach of the full power facility due to terrain obstructions and provide a "city grade like" service in more of the urbanized area. For this reason, we feel that localism can be promoted if the Commission change their "Tuck" policy to extend the area being reviewed for consideration under "Tuck" to include the entire service contour and not just the city grade contour.

Limited secondary station protections

13. Limited protections to LPFM stations, Class D stations and "legacy" translator stations - REC acknowledges the Commission's desires when it created the Low Power FM (LPFM) service that LPFM should not foreclose opportunities on the primary broadcasting service. We do feel however, that in some cases discretion can be taken to assure that there will be a minimal impact to the displacement of LPFM, Class D secondary stations and certain legacy translators¹⁵ (collectively "LPFM stations"). We feel that when choosing a channel, an allotment proponent must select a channel that does not displace any LPFM station if such a channel is available. If no channels are available that can prevent the displacement of an LPFM station, the proponent must include a statement either in the body of their petition or within their engineering statement that indicates all of the clear channels that are available in a particular area and that none of these

¹⁴ - See *Parker and Port St Joe, Florida*, 11 FCC Rcd 1095, para 9-11 (1996). (Community lacked local phone directory and local newspaper and was listed in urbanized Arbitron market.

¹⁵ - In recent comments in MB Docket 99-25, REC Networks defined a "Legacy Translator" as one that had its application for an original construction permit filed prior to March, 2003 and granted and has its ultimate primary station located either within the same state as the translator or in a different state but within 400km of the translator. In addition, REC extended its definition of "legacy" translators to include original construction permits, either pending or granted filed during the March, 2003 translator filing window, which is commonly owned, has its 60dBu service contour entirely within the protected service contour of the primary station and serves a significant population center that can not be served by the primary station or any theoretical booster facility.

channels could be used without displacing an LPFM, Class D or translator station. The channel chosen for the allotment should be the one that has the weakest predicted field strength at the displaced station's transmitting antenna.

14. Counterproposals for different channels. In addition to or instead of the limited protection indicated above, REC feels that in an allotment case, the licensee or permit holder of an LPFM, Class D or certain legacy translator station be permitted to file a counterproposal for the full power station to use a different channel for the proposed allotment if an additional channel is available. The counterproposal must propose the same class of station at the same reference coordinates. As long as the party filing the counterproposal is an LPFM, Class D or legacy translator, they do not need to make a statement that they intend to file for that channel if granted. The party filing the counterproposal must make a showing of why the currently proposed channel, class and location will create interference and why their proposal will better meet the public interest. On city of license changes where the new location and channel are mutually exclusive to the current full-power station and the proposal does not call for a channel change, the party filing the counterproposal must state that they agree to pay reasonable costs associated with a channel change and are obligated to follow through. In the alternate, the full power proponent of the original proposal could pay reasonable costs to the LPFM station if there are available channels for the LPFM station to move to.

15. Status of the LPFM, Class D or Translator service. Nothing in this concept would convey a "primary status" to LPFM stations, Class D stations or FM translators. It only serves as a method assuring that if there's a solution to maintaining the secondary low power service while allowing the full power service to expand, that solution should be implemented. The public interest dictates that if a secondary station, some with decades of service to their community are on the verge of being displaced that an allocation strategy that would allow both the full power station and the secondary low power station to prevail would be warranted. In this proposal, REC continues to treat LPFM, Class-D and Translators as secondary services. If no other solution is available where the primary and secondary station would coexist, then the primary station would prevail resulting in displacement of the secondary station.

Conclusion

16. REC supports changes to the FM (and TV) Table of Allotment rules to promote localism, provide minimum protections to existing secondary facilities when alternate solutions are available to accommodate both stations and most importantly, to modernize the *Tuck* criteria to deal with radio's problems today. We feel that the filing fees for allotments is the perfect barrier to speculative filings. We also feel that the Table of Allotments filing process must be modernized to allow electronic filing like many other FCC rulemaking proceedings.

Respectfully Submitted,

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